

REMARKS

Claims 1-15 are pending in this application. Reconsideration in view of the following remarks is respectfully requested.

Applicants gratefully acknowledge the withdrawal of all previous grounds of rejection. As discussed during a June 10 telephone conference between Examiner Mitchell and Applicants' representative, claims 1-15 are now only provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 8, 11, 54, 57, 100 and 103 of co-pending Application No. 09/370,891. This rejection is respectfully traversed.

The Office Action refers to M.P.E.P. §822 in support for the double patenting rejection. However, M.P.E.P. §822.01 under the heading ONLY PROVISIONAL DOUBLE PATENTING REJECTION REMAINING IN ONE APPLICATION states the following:

The "provisional" double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that "provisional" double patenting rejection is the only rejection remaining in one of the applications. If the "provisional" double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the "provisional" double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent. (emphasis added)

See M.P.E.P. §804 I.B. for similar language as contained in the above-cited reference.

Both the present invention and the co-pending Application No. 09/370,891 are assigned to the same inventive entity. Furthermore, the Office Action only rejects the present invention under the provisional double patenting rejection. In view of this, MPEP §822.01 applies and it is requested that the Examiner promptly withdraw the rejection to permit the present invention to issue as a patent. At that time, the Examiner may consider whether a double-patenting rejection should be made in the co-pending Application No. 09/370,891.

In view of the foregoing remarks, it is respectfully submitted that the application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-15 are earnestly solicited.

Should the Examiner believe that anything further is desirable in order to place this application in better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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